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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. S-372

13 KHRISTOPHER ROBIN MIDDAUGH
4732 Fairhope Drive
14 La Mirada, California 90638

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California, (Board)
21 Department of Consumer Affairs.

22 2. On or about April 27, 2006, the Board received an application for a
23 Respiratory Care Practitioner License from Khristopher Robin Middaugh (Respondent). On or
24 about March 3, 2006, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 August 30, 2006.

27 JURISDICTION

28 3. This Statement of Issues is brought before the Board under the authority of

1 the following laws. All section references are to the Business and Professions Code (Code) unless
2 otherwise indicated.

3 4. Section 3710 of the Code states: "The Respiratory Care Board of California,
4 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the
5 Respiratory Care Practice Act]."

6 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
7 revoke licenses to practice respiratory care as provided in this chapter."

8 6. Section 3732, subdivision (b) of the Code states:
9 "The board may deny an application, or may order the issuance of a license
10 with terms and conditions, for any of the causes specified in this chapter for
11 suspension or revocation of a license, including, but not limited to, those causes
12 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

13 7. Section 3750 of the Code states:
14 "The board may order the denial, suspension or revocation of, or the
15 imposition of probationary conditions upon, a license issued under this chapter, for
16 any of the following causes:

17 ". . .

18 "(d) Conviction of a crime that substantially relates to the qualifications,
19 functions, or duties of a respiratory care practitioner. The record of conviction or a
20 certified copy thereof shall be conclusive evidence of the conviction. . . ."

21 8. Section 3750.5 of the Code states:

22 "In addition to any other grounds specified in this chapter, the board may
23 deny, suspend, or revoke the license of any applicant or license holder who has done
24 any of the following:

25 "(a) Obtained or possessed in violation of law, or except as directed by a
26 licensed physician and surgeon, dentist, or podiatrist administered to himself or
27 herself, or furnished or administered to another, any controlled substances as
28 defined in Division 10 (commencing with Section 11000) of the Health and Safety

1 Code. . . .”

2 9. Section 3752 of the Code states:

3 “A plea or verdict of guilty or a conviction following a plea of nolo
4 contendere made to a charge of any offense which substantially relates to the
5 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
6 a conviction within the meaning of this article. The board shall order the license
7 suspended or revoked, or may decline to issue a license, when the time for appeal
8 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
9 order granting probation is made suspending the imposition of sentence, irrespective
10 of a subsequent order under Section 1203.4 of the Penal Code allowing the person
11 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
12 the verdict of guilty, or dismissing the accusation, information, or indictment.”

13 10. Section 492 of the Code states:

14 “Notwithstanding any other provision of law, successful completion of any
15 diversion program under the Penal Code, or successful completion of an alcohol and
16 drug problem assessment program under Article 5 (commencing with section
17 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
18 agency established under Division 2 ([Healing Arts] commencing with Section 500)
19 of this code, or any initiative act referred to in that division, from taking disciplinary
20 action against a licensee or from denying a license for professional misconduct,
21 notwithstanding that evidence of that misconduct may be recorded in a record
22 pertaining to an arrest.”

23 11. California Code of Regulations, Title 16, section 1399.370, states:

24 “For the purposes of denial, suspension, or revocation of a license, a crime
25 or act shall be considered to be substantially related to the qualifications, functions
26 or duties of a respiratory care practitioner, if it evidences present or potential
27 unfitness of a licensee to perform the functions authorized by his or her license or in
28 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts

1 shall include but not be limited to those involving the following:

2 “ . . .

3 “(c) Conviction of a crime involving driving under the influence or reckless
4 driving while under the influence. . . .”

5 COST RECOVERY

6 12. Section 3753.5, subdivision (a) of the Code states:

7 "In any order issued in resolution of a disciplinary proceeding before the
8 board, the board or the administrative law judge may direct any practitioner or
9 applicant found to have committed a violation or violations of law to pay to the
10 board a sum not to exceed the costs of the investigation and prosecution of the
11 case."

12 13. Section 3753.7 of the Code states:

13 "For purposes of the Respiratory Care Practice Act, costs of prosecution
14 shall include attorney general or other prosecuting attorney fees, expert witness fees,
15 and other administrative, filing, and service fees."

16 14. Section 3753.1, subdivision (a) of the Code states:

17 "An administrative disciplinary decision imposing terms of probation may
18 include, among other things, a requirement that the licensee-probationer pay the
19 monetary costs associated with monitoring the probation."

20 FIRST CAUSE FOR DENIAL OF APPLICATION

21 (Conviction of a Crime)

22 15. Respondent's application is subject to denial under Business and
23 Professions Code sections 3750, subdivision (d); 3752; and, California Code of Regulations,
24 Title 16, section 1399.370, subdivision (c), in conjunction with Business and Professions
25 Code section 3732, subdivision (b), in that Respondent was convicted of crimes
26 substantially related to the qualifications, functions and duties of a respiratory care
27 practitioner. The circumstances are as follows:
28

June 4, 2001 Conviction

A. On or about February 21, 2001, Los Angeles police officers observed Respondent's pick-up truck roll backwards out of a gas station across a street and hit a building. Respondent sat up in his pick-up truck and drove away on the wrong side of the road. The police officers initiated a traffic stop and ordered Respondent out of his vehicle. The officers noticed that Respondent's eyes were watery, his speech was slurred, and his breath had an odor of alcohol. Respondent stated he did not recall being involved in a traffic collision or driving on the wrong side of the road. He told the officers he had been drinking a couple of beers at a bar. Respondent failed to successfully complete the field sobriety tests. The results of his breath test indicated his blood alcohol level was .09%.

B. On March 12, 2001, in Los Angeles County Superior Court Complaint No. 1MT01929, Respondent was charged with violating Vehicle Code sections 23152(a), driving under the influence of alcohol, a misdemeanor (Count 1), with a prior conviction for violating Vehicle Code section 23152(a) on April 7, 1998; 23152(b), driving with .08% or higher blood alcohol level, a misdemeanor (Count 2); and, 20002(a), hit and run/property damage, a misdemeanor (Count 3).

C. On June 4, 2001, pursuant to a negotiated plea agreement, Respondent was convicted upon his plea of nolo contendere to driving with .08% or higher blood alcohol level (Count 2). He admitted the prior conviction. Proceedings were suspended and Respondent was placed on probation for five years on a number of terms and conditions. The court ordered him to serve 96 hours in county jail (with credit for 48 hours), pay fines and assessments in the amount of \$1,494.00, and complete an 18-month alcohol treatment program. His driving privilege was restricted for 18 months. He was also ordered to make full restitution to the victim. Counts 1 and 3 of the complaint were dismissed as part of the negotiated plea agreement.

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1 three years on a number of terms and conditions. The court ordered him to pay
2 fines and penalty assessments in the amount of \$1,189.00, and restricted his driving
3 privilege for 90 days. He was also ordered to complete a three month alcohol
4 program. Count 2 of the complaint was dismissed.

5 SECOND CAUSE FOR DENIAL OF APPLICATION

6 (Possession of a Controlled Substance)

7 16. Respondent's application is subject to denial under Business and
8 Professions Code section 3750.5, subdivision (a), in conjunction with section 3732,
9 subdivision (b), in that he possessed marijuana, a Schedule I controlled substance. The
10 circumstances are as follows.

11 A. On or about June 10, 2001, a Newport Beach police officer observed
12 a vehicle without a front license plate in a parking lot. Respondent was a passenger
13 in the front seat of the vehicle. As the officer approached the vehicle, he observed
14 Respondent reach beneath the seat. After Respondent exited the vehicle, the officer
15 observed a marijuana pipe on the passenger floor board. Respondent stated he had
16 some marijuana in a plastic baggie in the center console of the vehicle. He admitted
17 that the marijuana and the pipe belonged to him, and that he intended to smoke it
18 before going to a bar. Respondent was issued a Notice to Appear.

19 B. On June 12, 2001, in Los Angeles County Superior Court Complaint
20 No. K38564, Respondent was charged with possession of less than one ounce of
21 marijuana, in violation of Health and Safety Code section 11357(b), a misdemeanor
22 (Count 1). On August 7, 2001, the complaint was amended to charge failure to
23 appear on a written promise, in violation of Penal Code section 583.7, a
24 misdemeanor (Count 2).

25 C. On August 21, 2001, respondent was convicted upon his plea of
26 guilty to failure to appear on a written promise (Count 2). He was ordered to pay
27 court costs in the amount of \$50.00. As to Count 1, Respondent was placed on
28 diversion by the court. He was ordered to pay a diversion fee in the amount of

\$50.00, and to complete an alcohol and drug awareness program.

P R A Y E R

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of Khristopher Robin Middaugh for a Respiratory Care Practitioner License;
2. Directing Khristopher Robin Middaugh to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: February 21, 2007

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant